

AMENDED IN ASSEMBLY MAY 17, 2011

AMENDED IN ASSEMBLY MAY 4, 2011

AMENDED IN ASSEMBLY APRIL 25, 2011

AMENDED IN ASSEMBLY MARCH 29, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1219

Introduced by Assembly Member Perea

February 18, 2011

An act to amend Section 1747.08 of the Civil Code, relating to credit cards.

LEGISLATIVE COUNSEL'S DIGEST

AB 1219, as amended, Perea. Credit cards: personal information.

Existing state and federal law regulate the provision of credit and the use of credit cards. Existing state law prohibits a person, firm, partnership, association, or corporation that accepts credit cards for the transaction of business from requesting or requiring the cardholder to provide personal identification information, which is then recorded, as a condition to accepting the credit card as payment in full or in part for goods or services, but provides various exceptions to this prohibition. Existing law excepts from this prohibition the instance when the person or entity accepting the card is contractually obligated to provide personal identification information in order to complete the transaction or is obligated to collect and record the identification information by federal law. Existing law also permits a person or entity accepting a credit card to record the cardholder's driver's license number or identification card number if the cardholder pays for the transaction with a credit card

number and does not make the credit card available upon request to verify the number.

~~This bill would condition the prohibition described above upon the cardholder physically presenting a credit card with a properly functioning magnetic stripe or other electronically readable device. The bill would except from the prohibition described above the instance when the person or entity accepting the card uses the personal information for prevention of fraud, theft, or identity theft and would specify that state law obligations are also permissible reasons to collect and record personal information. The bill also would except from the prohibition instances when the person or entity accepting the card requests personal information for purposes of verifying a proprietary credit card and the cardholder does not produce it and face-to-face transactions when the credit card does not have a functioning magnetic stripe or is not otherwise electronically readable, subject to specified limitations.~~ The bill would delete the authorization of a person or entity accepting a credit card to record the cardholder's driver's license number or identification card number if the cardholder pays for the transaction with a credit card number and does not make the credit card available. The bill would also make a statement of intent with regard to certain of these provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1747.08 of the Civil Code is amended
2 to read:

3 1747.08. (a) Except as provided in subdivision (c), ~~if a~~
4 ~~cardholder physically presents a credit card to an employee,~~
5 ~~authorized agent, or representative of a person, firm, partnership,~~
6 ~~association, or corporation as payment, and the credit card has a~~
7 ~~properly functioning magnetic stripe or other electronically~~
8 ~~readable device, the~~ no person, firm, partnership, association, or
9 corporation that accepts credit cards for the transaction of business
10 shall ~~not~~ do any of the following:

11 (1) Request, or require as a condition to accepting the credit
12 card as payment in full or in part for goods or services, the
13 cardholder to write any personal identification information upon
14 the credit card transaction form or otherwise.

1 (2) Request, or require as a condition to accepting the credit
2 card as payment in full or in part for goods or services, the
3 cardholder to provide personal identification information, which
4 the person, firm, partnership, association, or corporation accepting
5 the credit card writes, causes to be written, or otherwise records
6 upon the credit card transaction form or otherwise.

7 (3) Utilize, in any credit card transaction, a credit card form
8 which contains preprinted spaces specifically designated for filling
9 in any personal identification information of the cardholder.

10 (b) For purposes of this section “personal identification
11 information,” means information concerning the cardholder, other
12 than information set forth on the credit card, and including, but
13 not limited to, the cardholder’s address and telephone number.

14 (c) Subdivision (a) does not apply in the following instances:

15 (1) If the credit card is being used as a deposit to secure payment
16 in the event of default, loss, damage, or other similar occurrence.

17 (2) Cash advance transactions.

18 (3) If any of the following applies:

19 ~~(1) The person, firm, partnership, association, or corporation~~
20 ~~accepting the credit card:~~

21 ~~(A) The person, firm, partnership, association, or corporation~~
22 ~~accepting the credit card is~~ contractually obligated to provide
23 personal identification information in order to complete the credit
24 card transaction.

25 ~~(B) Uses—The person, firm, partnership, association, or~~
26 ~~corporation accepting the credit card uses~~ the personal
27 ~~identification~~ information solely for prevention of fraud, theft, or
28 identity theft or uses the personal information for any of these
29 purposes concurrently with a purpose permitted under paragraph
30 (4).

31 ~~(C) The person, firm, partnership, association, or corporation~~
32 ~~accepting the credit card is~~ obligated to collect and record the
33 personal identification information by federal or state law or
34 regulation.

35 (4) If personal identification information is required for a special
36 purpose incidental but related to the individual credit card
37 transaction, including, but not limited to, information relating to
38 shipping, delivery, servicing, or installation of the purchased
39 merchandise, or for special orders.

1 (5) *If personal identification information is requested to verify*
2 *that a person has a proprietary credit card account with the person,*
3 *firm, partnership, association, or corporation and that person*
4 *does not produce the proprietary credit card at the time of the*
5 *transaction. For purposes of this paragraph a “proprietary credit*
6 *card” means a credit card issued by the person, firm, partnership,*
7 *association, or corporation.*

8 (6) *If, in a face-to-face transaction, the credit card does not*
9 *have a properly functioning magnetic stripe or is otherwise not*
10 *electronically readable, the person, firm, partnership, association,*
11 *or corporation may record only the cardholder’s name, credit*
12 *card account number, and expiration date; and provided further*
13 *that the personal identification information that is required is used*
14 *only to complete the transaction, or for a purpose authorized by*
15 *this section, and is thereafter deleted, discarded, or destroyed.*

16 (d) This section does not prohibit any person, firm, partnership,
17 association, or corporation from requiring the cardholder, as a
18 condition to accepting the credit card as payment in full or in part
19 for goods or services, to provide reasonable forms of positive
20 identification, which may include a driver’s license or a California
21 state identification card, or where one of these is not available,
22 another form of photo identification, provided that none of the
23 information contained thereon is written or recorded on the credit
24 card transaction form or otherwise.

25 (e) Any person who violates this section shall be subject to a
26 civil penalty not to exceed two hundred fifty dollars (\$250) for the
27 first violation and one thousand dollars (\$1,000) for each
28 subsequent violation, to be assessed and collected in a civil action
29 brought by the person paying with a credit card, by the Attorney
30 General, or by the district attorney or city attorney of the county
31 or city in which the violation occurred. However, no civil penalty
32 shall be assessed for a violation of this section if the defendant
33 shows by a preponderance of the evidence that the violation was
34 not intentional and resulted from a bona fide error made
35 notwithstanding the defendant’s maintenance of procedures
36 reasonably adopted to avoid that error. When collected, the civil
37 penalty shall be payable, as appropriate, to the person paying with
38 a credit card who brought the action, or to the general fund of
39 whichever governmental entity brought the action to assess the
40 civil penalty.

(f) The Attorney General, or any district attorney or city attorney within his or her respective jurisdiction, may bring an action in the superior court in the name of the people of the State of California to enjoin violation of subdivision (a) and, upon notice to the defendant of not less than five days, to temporarily restrain and enjoin the violation. If it appears to the satisfaction of the court that the defendant has, in fact, violated subdivision (a), the court may issue an injunction restraining further violations, without requiring proof that any person has been damaged by the violation. In these proceedings, if the court finds that the defendant has violated subdivision (a), the court may direct the defendant to pay any or all costs incurred by the Attorney General, district attorney, or city attorney in seeking or obtaining injunctive relief pursuant to this subdivision.

(g) Actions for collection of civil penalties under subdivision (e) and for injunctive relief under subdivision (f) may be consolidated.

(h) The changes made to this section by Chapter 458 of the Statutes of 1995 apply only to credit card transactions entered into on and after January 1, 1996. Nothing in those changes shall be construed to affect any civil action which was filed before January 1, 1996.

(i) It is the intent of the amendments made by the act adding this subdivision to clarify existing law. These clarifying amendments continue to protect personal identification information while allowing and recognizing the legitimate business need for a person, firm, partnership, association, or corporation that accepts credit cards for the transaction of business to use personal identification information to appropriately process and complete all components of customer transactions and to protect consumers against criminal activity, such as identity theft, which is currently the largest source of consumer complaints to the Federal Trade Commission for the purposes authorized by this section. These amendments recognize, in part, legitimate business practices designed to address the increased potential for identity theft that results if the cardholder is not present or if the credit card does not function correctly.

O